

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT
COUNTY OF INGHAM

JENNIFER M. GRANHOLM, Attorney General
of the State of Michigan and the
MICHIGAN DEPARTMENT
OF ENVIRONMENTAL QUALITY,

Plaintiffs,

v

CEMEX, INC.

Defendant,

CASE NO. 02-1135-CE

Honorable LAWRENCE M. GLAZER

CONSENT DECREE

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Attachment A Depiction of Cemex Property including CKD Piles 1, 2, 3, 4, 5 and 8.

Attachment B Financial Test

The Plaintiffs are Jennifer M. Granholm, Attorney General of the State of Michigan, and the Michigan Department of Environmental Quality (MDEQ).

The Defendant is Cemex, Inc. ("Cemex"), a Louisiana corporation.

This Consent Decree ("Decree") requires the performance of interim response activities by Cemex, at the Cemex Facility located in Charlevoix, Michigan (hereafter "Facility"). Cemex agrees not to contest (a) the authority or jurisdiction of the Court to enter this Decree or (b) any terms or conditions set forth herein. Cemex reserves the right to dispute MDEQ's interpretations or determinations under this Decree, excluding interpretations or determinations made under Section X (Creation of Danger), in the manner set forth in Section XVII (Dispute Resolution).

The entry of this Decree by Cemex is neither an admission nor denial of liability with respect to any issue dealt with in this Decree nor an admission or denial of any factual allegations or legal conclusions stated or implied herein.

The Parties agree, and the Court by entering this Decree finds, that the response activities set forth herein are necessary to abate the release or threatened release of hazardous substances into the environment, to control future releases, and to protect public health, safety, and welfare, and the environment.

NOW, THEREFORE, before the taking of any testimony, and without this Decree constituting an admission of any of the allegations in the Complaint or as evidence of the same, and upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED AND DECREED: .

I. JURISDICTION

1.1 This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.3115 and MCL 324.20137. This Court also has personal jurisdiction over Cemex. Cemex waives all objections and defenses that it may have with respect to jurisdiction of the Court or to venue in this District.

1.2 The Court determines that the terms and conditions of this Decree are reasonable, adequately resolve the environmental issues raised, and properly protect the interests of the people of the State of Michigan.

1.3 The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Decree and to resolve disputes arising under this Decree, including those that may be necessary for its construction, execution or implementation, subject to Section XVII (Dispute Resolution).

II. PARTIES BOUND

2.1 This Decree shall apply to and be binding upon Plaintiffs and Cemex and their respective successors and assigns. No change or changes in the ownership or corporate status or other legal status of Cemex, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter Cemex's responsibilities under this Decree. Cemex shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Facility located at 16000 Bells Bay Road, Charlevoix, Charlevoix County, Michigan, and shall also provide a copy of this Decree to any subsequent owners or successors prior to the transfer of any ownership rights. Cemex shall comply with the requirements of Section 20116 of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act ("NREPA"), 1994 PA 451, as amended, MCL 324.20116.

2.2 Cemex shall provide a copy of this Decree to all contractors, subcontractors, laboratories and consultants that are directly retained by Cemex to conduct any portion of the response activities performed pursuant to this Decree within ten (10) calendar days after the effective date of such retention.

2.3 Notwithstanding the terms of any contract that Cemex may enter with respect to the performance of response activities pursuant to this Decree, Cemex is responsible for compliance with the terms of this Decree and shall ensure that such contractors, subcontractors, laboratories and consultants perform all response activities in conformance with the terms and conditions of this Decree.

2.4 The signatories to this Decree certify that they are authorized to execute this Decree and legally bind the Parties they represent.

III. STATEMENT OF PURPOSE

In entering into the Decree, the mutual objectives of the Plaintiffs and Cemex are to implement the interim response activities with the intent to achieve final response activities that comply with Sections 20118, 20120a and 20120b of Part 201 of the NREPA, MCL 324.20118, MCL 324.20120a and MCL 324.20120b, for the Cemex Interim Response Activity Area, excluding any other portion of the Cemex Property that is not included in the definition of the Cemex Interim Response Activity Area and Lake Michigan. The other objectives of this Decree are to reimburse Plaintiffs for Past Response Activity Costs, future Oversight Costs, and past costs for SWQD investigation and enforcement activities associated with the Facility as described in Section XVIII (Reimbursement of Costs and Payment of Civil Penalties); pay Plaintiffs for civil penalties that have been incurred for Violations of Part 31 of the NREPA; and minimize litigation.

IV. DEFINITIONS

4.1 "Cement Kiln Dust" or "CKD" Piles 1, 2, 3, 4, 5, and 8 mean those individual areas as described below and generally depicted in Attachment A.

- a) CKD Pile 1 means the area of CKD deposition derived from the wet process of cement production and pugmilled prior to disposal in a pile located east of the Cemex quarry during the years of 1968-1969. It consists of approximately 44,000 tons of waste CKD.
- b) CKD Pile 2 means the area of CKD deposition derived from the wet process of cement production and pugmilled prior to disposal in a pile located east of the Cemex quarry during the years of 1969-1972. It consists of approximately 468,000 tons of waste CKD.
- c) CKD Pile 3 means the area of CKD deposition derived from the wet process of cement production and pugmilled prior to disposal in a pile located east of the Cemex quarry during the years of 1970-1972. It consists of approximately 20,000 tons of waste CKD.
- d) CKD Pile 4 means the area of CKD deposition derived from the wet process of cement production and pugmilled prior to disposal. CKD Pile 4 was disposed of in a pile located north and northwest of the cement manufacturing facility on the shore of Lake Michigan. This pile was placed above and below the groundwater table in 1973. It consists of approximately 120,000 tons of waste CKD and overburden.
- e) CKD Pile 5 means the area of CKD deposition derived from the dry process of cement production and pugmilled prior to disposal. CKD Pile 5 is located north of the east arm of the Cemex quarry and south of Lakeshore Drive. This pile consists of approximately 652,000 tons of waste CKD and was placed in a pile in the years 1974-1980.
- f) CKD Pile 8 means the area of CKD deposition derived from the dry process of cement production and pugmilled prior to disposal. CKD Pile 8 was located in the Cemex

quarry and has been relocated to CKD Pile 5. It consisted of approximately 10,000 tons of waste CKD and overburden.

4.2 “Cemex” means Cemex, Inc. and its successors and assigns.

4.3 “Cemex Interim Response Activity Area” means Cement Kiln Dust Piles 1, 2, 3, 4, 5, and 8; the groundwater beneath CKD Pile 5 and the groundwater between CKD Pile 5 and the ordinary high-water mark of Lake Michigan as defined by MCL 324.32502; and the Fuel Oil Loss Area including the associated groundwater. The Cemex Interim Response Activity Area does not include any other groundwater at the Cemex Property including but not limited to the groundwater beneath CKD Pile 4 or the groundwater between CKD Pile 4 and the ordinary high-water mark of Lake Michigan as defined by MCL 324.32502.

4.4 “Cemex Property” means the property located at 16000 Bells Bay Road, Charlevoix, Michigan and generally depicted in Attachment A, including the area between the ordinary high-water mark, as defined by MCL 324.32502, and the Lake Michigan waterline.

4.5 “Day” shall mean a calendar day, unless otherwise specified.

4.6 “Defendant” means Cemex, Inc.

4.7 “Effective Date of this Decree” means the date this Decree is entered by the Court.

4.8 “ERD” means the Environmental Response Division of the MDEQ and its successor entities.

4.9 “Facility” means the Cemex Interim Response Activity Area and any area, place, or property where a hazardous substance, which originated at the Cemex Interim Response Activity Area and is present at concentrations that exceed the requirements of Section

20120a(1)(a) or (17) of the NREPA, MCL 324.20120a(1)(a) or (17), has been released, deposited, disposed of, or otherwise comes to be located.

4.10 “Fuel Oil Loss Area” means the area impacted by fuel oil constituents from the fuel oil loss discovered on June 12, 1991 and originating in the vicinity of the preheating building.

4.11 “MDEQ” means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf.

4.12 “Oversight Costs” means only those costs that are related to the State’s oversight, enforcement, monitoring, and documentation of compliance with this Decree and any State costs that may be incurred to perform response activities that Cemex is obligated to perform pursuant to this Decree but fails to perform in a satisfactory manner. Such Oversight Costs associated with this Decree may include, but are not limited to, costs incurred to: monitor performance of response activities at the Cemex Interim Response Activity Area required by this Decree; observe and comment on field activities required by this Decree; review and comment on Submissions; collect and evaluate samples to document Cemex’s performance of its obligations under this Decree; purchase equipment and supplies to perform monitoring activities to document compliance with this Decree; perform response activities pursuant to Section X (Creation of Danger) and Paragraph 5.12 (MDEQ’s Performance of Response Activities); attend and participate in meetings; prepare cost reimbursement documentation; and enforce, monitor and document compliance with this Decree. The term “Oversight Costs” does not include costs to collect samples to monitor groundwater seeps and conditions in Lake Michigan and costs of investigations to assess the need for response activities in addition to those required under this

Decree. As set forth in Paragraph 21.1(b) of this Decree, the State reserves the right to pursue recovery of any response activity costs not included as "Oversight Costs."

4.13 "Parties" means Cemex and the State.

4.14 "Past Response Activity Costs" means those costs that the ERD of the MDEQ and the Michigan Department of Attorney General, acting on behalf of the ERD of the MDEQ, have incurred and paid prior to the Effective Date of this Decree.

4.15 "Plaintiffs" means the MDEQ and Jennifer M. Granholm, the Attorney General for the State of Michigan.

4.16 The terms "State" and "State of Michigan" mean the Michigan Department of Attorney General (MDAG) and the Michigan Department of Environmental Quality, and any authorized representatives acting on their behalf.

4.17 "SWQD" means the Surface Water Quality Division of the MDEQ and its successor entities.

4.18 "Violations of Part 31" means:

(a) any violations of Part 31 that occur prior to entry of this Decree, which SWQD has knowledge of;

(b) violations attributable to groundwater flow from CKD Pile 4, except in the event that any time after three years from the completion of the removal of CKD Pile 4, MDEQ determines that the area of former Pile 4 continues to act as a source of contamination, above Part 31 criteria, to the waters of the State;

(c) any violations attributable to groundwater flow from CKD Pile 5 that occur prior to entry of this Decree; and

(d) any future violations attributable to groundwater flow from CKD Pile 5 except in the event that MDEQ determines that impacted groundwater, above background groundwater quality, is not being hydraulically captured by the groundwater capture system or the groundwater capture system is not operating as designed.

(e) For the purposes of paragraph 4.18(b), completion of the removal of CKD Pile 4 means the MDEQ has provided Cemex with written approval that the removal has been completed.

4.19 "Water Quality Standards" shall have the meaning set forth in the rules promulgated pursuant to Part 31 of the NREPA.

4.20 "WMD" means the Waste Management Division of the MDEQ and its successor entities.

4.21 Unless otherwise stated herein, all terms used in this document, which are defined in Part 3 of the NREPA, MCL 324.301, Part 201 of the NREPA, MCL 324.20101, *et seq*, or the Part 201 Rules, 1990 AACSR 299.5101, *et seq*, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Rules.

V. PERFORMANCE OF RESPONSE ACTIVITIES

5.1 The purpose of this Decree is to implement interim response activities at the Cemex Interim Response Activity Area in accordance with an MDEQ-approved Interim Response Activity Plan ("IRAP") for the Cemex Interim Response Activity Area. The IRAP shall include the following and upon MDEQ approval of all Submittals set forth in Paragraph 5.1(a-e), it shall be considered the MDEQ-approved IRAP:

(a) Response activity plan for CKD Piles 1, 2, 3, 4, 5, and 8 as set forth in the Interim Response Activity Work Plan - Cement Kiln Dust Piles 1, 2, 3, 4, 5, and 8 for Cemex, Inc., Charlevoix, Michigan, dated September 2001, as approved with modifications by the MDEQ on December 28, 2001. This plan includes the removal of CKD Pile 4, relocation of CKD Pile 4 and CKD Pile 8 onto CKD Pile 5, construction of a groundwater interception trench between CKD Pile 5 and Lake Michigan, and construction of an engineered 60 mil HDPE cap on Pile 5. This plan, together with the modifications, are incorporated into this Decree, for purposes of CKD Piles 1, 2, 3, 4, 5, and 8, and are enforceable pursuant to the terms of this Decree. Upon the Effective Date of this Decree, Cemex shall implement the response activities provided for in this plan for CKD Piles 1, 2, 3, 4, 5, and 8 in accordance with the schedules in this plan.

(b) Interim Response Activity Work Plan, Fuel Oil Release Remedy Elements, Cemex, Inc. - Charlevoix Plant, Charlevoix, Michigan, dated August 2001, as approved with modifications by MDEQ on December 28, 2001. This document, together with the modifications, are incorporated into this Decree and are enforceable pursuant to the terms of this Decree. Upon the Effective Date of this Decree, Cemex shall implement the response activities for the Fuel Oil Loss Area provided for in this plan in accordance with the schedules in this plan.

(c) An Operation and Maintenance Plan ("O & M Plan") to implement required operation and maintenance activities necessary to ensure the effectiveness and integrity of the response activities for CKD Piles 1, 2, 3, 4, 5, and 8, and the Fuel Oil Loss Area. Cemex shall submit the O & M Plan within sixty (60) days after the Effective Date of this Decree. The O & M Plan shall address all items necessary for CKD Piles 1, 2, 3, 4, 5, and 8 and the Fuel Oil Loss Area, and include an implementation schedule and an estimate of the costs for a third party to

perform the necessary O & M, monitoring, and other response activities necessary to ensure the effectiveness and integrity of the MDEQ-approved IRAP for the initial thirty (30) year period.

The O & M Plan shall be subject to review and approval in accordance with Section XIII (Submissions and Approvals).

(d) A Restrictive Covenant for the Cemex Interim Response Activity Area. Cemex shall submit the Restrictive Covenant within sixty (60) days after the Effective Date of this Decree and shall include all the required land use or resource use restrictions pertaining to CKD Piles 1, 2, 3, 4, 5, and 8 and the Fuel Oil Loss Area. The Restrictive Covenant shall be subject to review and approval in accordance with Section XIII (Submissions and Approval). The MDEQ-approved Restrictive Covenant shall be recorded with the Charlevoix County Register of Deeds within 21 days of the completion of construction of the engineered cap and the groundwater interception trench for CKD Pile 5. Cemex shall provide a true copy of the recorded Restrictive Covenant to the MDEQ within ten (10) days after the document is recorded and returned to Cemex by the Charlevoix County Register of Deeds. The copy provided to the MDEQ shall include the liber and page number.

(e) A Financial Assurance Mechanism, as set forth in Section VI (Financial Assurance Mechanism) of this Decree.

5.2 In order for the MDEQ to consider the response activities final for the Cemex Interim Response Activity Area, excluding Lake Michigan, as set forth in Section III and Paragraph 5.3, Cemex shall meet the cleanup criteria and other requirements specified in Sections 20118, 20120a, and 20120b of Part 201 of the NREPA, MCL 324.20118, MCL 324.20120a and MCL 324.20120b. It is not the intent of MDEQ, through entry of this Decree, to consider the work performed pursuant to the MDEQ-approved IRAP, as final response activities

for any other portion of Cemex Property that is not included in the definition of Cemex Interim Response Activity Area. Cemex shall meet the following performance objectives: the performance objective for the groundwater capture trench system adjacent to CKD Pile 5 is to hydraulically capture all the impacted groundwater from CKD Pile 5 that exceeds background groundwater quality. CKD Pile 5 shall be covered with a 60 mil HDPE flexible membrane liner, a geosynthetic drainage composite and a thirty-inch thick vegetated overburden soil layer. With respect to the performance standard for CKD Pile 4, Cemex shall excavate and remove the accessible CKD and contaminated soil at Pile 4 using standard earth moving techniques and standard construction equipment such as bulldozers, front-end loaders, and scrapers. The removed CKD shall be incorporated into Pile 5 prior to covering Pile 5. The removal of CKD material from Pile 4 shall be confirmed by analytical testing of the remaining soils for arsenic, barium, cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, vanadium and zinc. Highly saturated CKD that cannot be removed using standard equipment may be left in place. If any CKD waste material left in place exceeds Part 201 soil industrial criteria or the background levels established for CKD Pile 7, whichever is higher, it will be covered with a low permeability cover. The cover will consist of the following components: a prepared subgrade, a geosynthetic liner (GCL), and a 30-inch thick vegetated overburden soil layer. The final cover system for Pile 4 will be designed in accordance with Rule 299.4304. Rule 299.4304(5) requires that the maximum slope on a final cover shall not exceed 4:1, and the minimum slope shall not be less than 2%. The final grades on Pile 4 will comply with these requirements. The GCL component of the final cover will terminate at the limits of CKD. The soil component of the final cover will be extended to the limits of construction. The design of the final cover over Pile 4 will include a GCL infiltration layer (R 299.4304(6)(a)(iii)). The GCL will allow infiltration equal to or less

than two feet of compacted clay with a hydraulic conductivity of 1×10^{-7} cm/sec (R 299.4914(1)). The GCL will be covered with a 30-inch thick layer of protective cover soil. If there is any conflict between this Decree and the MDEQ-approved IRAP, this Decree shall prevail.

5.3 Except for any portion of the Cemex Property that is not included in the definition of the Cemex Interim Response Activity Area or any area of Lake Michigan, if any, where a hazardous substance emanating from the Cemex Interim Response Activity Area has come to be located and is present at concentrations that exceed the requirements of 20120a(1)(a) or (17) of the NREPA, and subject to Section XXI (Reservation of Rights By The State), the conditions of Cemex's National Pollutant Discharge Elimination System permit No. MI 003158 ("Cemex's NPDES Permit"), and its Solid Waste Disposal Area Operating License No. 8600 ("Cemex's SWDA License"), the performance of all response activities set forth in and approved pursuant to this Section V (Performance of Response Activities) shall constitute final response activities for the Cemex Interim Response Activity Area if the cleanup criteria and requirements set forth in Paragraphs 5.1 and 5.2 are met.

5.4 Based on the information currently known to the MDEQ, and subject to Section XXI (Reservation of Rights By The State) and the conditions of Cemex's NPDES Permit and Cemex's SWDA License, the MDEQ will consider Cemex to be in compliance with Section 20114(1)(g) of Part 201, MCL 324.20114(1)(g), for the Cemex Interim Response Activity Area as long as Cemex is in compliance with the MDEQ-approved IRAP or a work plan approved pursuant to this Decree and the schedules contained in the MDEQ-approved IRAP or approved work plan and no other response activities are subsequently deemed necessary by the MDEQ in order to comply with the applicable law.

5.5 Based on the information currently known to the MDEQ, the MDEQ acknowledges that the removal of CKD Pile 4, with placement of the CKD into Pile 5, and capping of CKD Pile 5, in conjunction with the construction of a groundwater interception trench for Pile 5, is expected to result in greater source control and reduction of hazardous substances venting from the CKD Piles to Lake Michigan, than the other options presented by Cemex and this plan is the most reasonable and practical alternative designed to address potentially unacceptable risks to public health, safety, welfare, and the environment of the options presented by Cemex. Nothing in this paragraph shall affect Cemex's obligations in regards to Cemex's NPDES Permit, including the Pollution Minimization Program requirements of Cemex's NPDES Permit, and Cemex's SWDA License, nor shall it affect the State's reservation of rights set forth in Section XXI (Reservation of Rights by the State.) Nothing in this paragraph shall affect Cemex's obligations or liability under Parts 201 or 31 of the NREPA in the event that the MDEQ-approved IRAP fails to meet the cleanup criteria of Part 201 of the NREPA or the Water Quality Standards under Part 31 of the NREPA.

5.6 For purposes of this section, information currently known to the MDEQ includes only that information contained in the files of SWQD, WMD, and ERD prior to the entry of this Decree, but does not include new or additional monitoring data obtained by the MDEQ after November 30, 2000.

5.7 MDEQ Approval of Cemex's Performance of Response Activities

(a) Cemex may apply to the MDEQ for an "Approval of Performance of Response Activities" when Cemex has performed the response activities required by the MDEQ-approved IRAP and any MDEQ-approved modifications to the IRAP, with the exception of any long term requirements associated with the performance of the MDEQ-approved IRAP. Long term

requirements associated with the performance of the IRAP means ensuring that any land and resource use restrictions are maintained and enforced, performing operation and maintenance and long term monitoring activities, and establishing and maintaining financial assurance and permanent markers as identified in the MDEQ-approved IRAP. When Cemex has met the criteria stated in this Paragraph, Cemex may send a "Request for Approval of Performance of Response Activities" and a draft Performance Report to the MDEQ. The draft Performance Report shall summarize all response activities conducted pursuant to the MDEQ-approved IRAP and shall include or reference any supporting documentation.

(b) If the MDEQ determines that Cemex has submitted sufficient information to demonstrate that Cemex has performed the response activities required by the MDEQ-approved IRAP, excluding any long term requirements, the MDEQ, ERD Division Chief will issue an "Approval of Performance of Response Activities".

(c) The MDEQ's issuance of an Approval of Performance of Response Activities does not relieve Cemex of its obligations to continue to comply with this Decree or to conduct response activities that are necessary to ensure the effectiveness and integrity of the MDEQ-approved IRAP as applicable to the Facility. Those response activities include, but are not limited to, ensuring that any land and resource use restrictions are maintained and enforced, performing operation and maintenance ("O&M") and long term monitoring activities, and establishing and maintaining financial assurance.

5.8 Modification of the MDEQ-approved IRAP

(a) If the MDEQ determines that a modification to the MDEQ-approved IRAP is necessary to construct, maintain or operate the response activities set forth in the MDEQ-approved IRAP and this Decree, the MDEQ may require that such modification be incorporated into the MDEQ-approved IRAP. If Cemex requests a modification to a response activity work plan, it shall submit such modification to the MDEQ for review and approval in accordance with the procedures set forth in Section XIII (Submissions and Approvals). If extensive modifications are necessary, the MDEQ may require Cemex to submit a new draft work plan, which has been developed in accordance with the requirements of this Decree, to the MDEQ for review and approval.

(b) Cemex shall perform response activities that are provided for in a modified response activity work plan or a new work plan in accordance with the MDEQ-approved time schedules contained in such plans.

5.9 Upon MDEQ approval, each component of each work plan and any approved modifications shall be deemed incorporated into this Decree and made an enforceable part of this Decree. Any modification may be disputed by Cemex pursuant to Section XVII (Dispute Resolution).

5.10 Progress Reports

Cemex shall provide to the MDEQ Project Coordinator written progress reports regarding response activities and other matters at the Facility related to the implementation of this Decree in accordance with the schedule contained in the MDEQ-approved IRAP. These progress reports shall include the following:

(a) A description of the activities that have been taken toward achieving compliance with this Decree during the previous reporting period;

(b) All results of sampling and tests and other data received by Cemex, its employees or authorized representatives during the previous reporting period relating to the response activities performed pursuant to this Decree, with such results designated as validated or not validated;

(c) The status of any access issues that have arisen, which affect or may affect the performance of response activities, and a description of how Cemex proposes to resolve those issues;

(d) A description of the nature and amount of waste materials that were generated and the name of the facilities that were used for the off-site transfer, storage, treatment or disposal of those waste materials;

(e) A description of data collection and other activities scheduled for the next reporting period; and

(f) Any other relevant information regarding other activities or matters at the Facility that affect or may affect the implementation of the requirements of this Decree.

The first progress report shall be submitted to the MDEQ within thirty (30) days following the Effective Date of this Decree. Thereafter, progress reports shall be submitted for each month, by the fifteenth of the next month, until an Approval of Performance of Response Activities is issued by MDEQ pursuant to Paragraph 5.7(b). Thereafter, quarterly progress reports shall be submitted for the previous three months and shall be due on the fifteenth of January, April, July and October of each year. The Parties to this Decree may modify the

schedule for the submission of progress reports contained in an MDEQ-approved IRAP or work plan as provided for in Section XV (Modifications).

5.11 Voidance of MDEQ approval of the IRAP

(a) If the provisions of Section 20120b(3)(a)-(e) of the NREPA lapse or are not complied with as provided for in the MDEQ-approved IRAP, the MDEQ's approval of the IRAP is void from the time of the lapse or noncompliance, until such lapse or noncompliance is corrected to the satisfaction of the MDEQ in accordance with Paragraph 5.11(b). A lapse of, or noncompliance with, the MDEQ-approved IRAP includes but is not limited to the following: (i) a court of competent jurisdiction determines that a land or resource use restriction is unlawful; (ii) a land or resource use restriction is not filed or enacted in accordance with the MDEQ-approved IRAP; (iii) a land or resource use restriction is violated or not enforced by the controlling entity; or (iv) a land or resource use restriction expires, is modified or revoked without MDEQ approval.

(b) Within thirty (30) days of Cemex becoming aware of a lapse or noncompliance under Paragraph 5.11(a), Cemex shall provide to the MDEQ a written notification describing the nature of the lapse or noncompliance. With that notification, Cemex shall also include either a written demonstration of how and when the lapse or noncompliance was corrected or, if Cemex cannot make that demonstration within the thirty (30)-day time period, an evaluation of the impact or potential impact of the lapse or noncompliance on the effectiveness and integrity of the MDEQ-approved IRAP and a plan and time schedule for addressing the lapse or noncompliance. If Cemex does not correct the lapse or noncompliance or submit a plan and time schedule to cure the lapse or non-compliance within the above thirty day time period, stipulated penalties as specified in Paragraph 19.1 shall begin to accrue the day after the lapse or noncompliance

occurred and continue to accrue until the lapse or noncompliance is corrected to the satisfaction of the MDEQ. This Paragraph 5.11(b) is subject to dispute resolution pursuant to Section XVII (Dispute Resolution).

(c) If MDEQ determines that a lapse or noncompliance occurred pursuant to Paragraph 5.11(a), MDEQ will notify Cemex of such a lapse or noncompliance and Cemex shall proceed as required by Paragraph 5.11(b). Cemex may dispute this determination pursuant to Section XVII (Dispute Resolution).

5.12 MDEQ's Performance of Response Activities

If Cemex fails to conduct any portion of the response activities required by this Decree or is implementing response activities in a manner that may cause an endangerment to human health or the environment, or fails to correct a lapse of, or noncompliance with, the MDEQ-approved IRAP, the MDEQ may, at its option and upon providing thirty (30) days prior written notice of such to Cemex, take over the performance of those response activities. The MDEQ, however, is not required to provide thirty (30) days written notice prior to performing response activities that the MDEQ determines to be necessary pursuant to Section X (Creation of Danger) of this Decree. Costs incurred by the State to perform such response activities shall be considered to be "Oversight Costs" and Cemex shall provide reimbursement of those costs to the State in accordance with Paragraphs 18.2 to 18.4 of Section XVIII (Reimbursement of Costs and Payment of Civil Penalties).

VI. FINANCIAL ASSURANCE MECHANISM

6.1 Cemex shall provide, in perpetuity, a financial assurance mechanism (FAM) to assure Cemex's ability to pay for operation and maintenance, oversight, monitoring and other

costs determined by the MDEQ to be necessary to assure the effectiveness and integrity of the response activity at the Cemex Interim Response Activity Area.

6.2 Cemex intends to rely on the Financial Test to satisfy Cemex's financial obligations for the initial thirty (30) year period that this Decree is in effect. The amount of the FAM shall reflect the estimated costs for implementation of the O & M Plan as set forth in the IRAP and for oversight, monitoring and other costs necessary to assure the effectiveness and integrity of the response activity at the Cemex Interim Response Activity Area for this initial thirty (30) year period. Within 30 days after MDEQ approval of the O & M Plan required pursuant to Paragraph 5.1(c), Cemex shall submit the necessary information to demonstrate that it meets the MDEQ's requirements for using the Financial Test (Attachment B) and the MDEQ shall review the submittal in accordance with Section XIII (Submissions and Approvals). If MDEQ does not approve the use of the Financial Test for the FAM requirements, within 30 days of MDEQ disapproval, Cemex shall submit an alternate FAM that meets the requirements set forth in Paragraph 6.3 of this Decree.

6.3 In the event that the Financial Test is approved by the MDEQ, within sixty (60) days of the end of Cemex's next fiscal year following the MDEQ's approval of the Financial Test and of the end of each succeeding fiscal year, Cemex shall submit to the MDEQ either the necessary forms and supporting documents to demonstrate to the satisfaction of the MDEQ that Cemex can continue to meet the Financial Test requirements as defined in Attachment B or, if Cemex can no longer meet those requirements, a proposal for an alternate FAM to satisfy its financial obligations with respect to this Decree. Any alternate FAM established pursuant to this Decree shall be secured in an amount that reflects the estimated costs for implementation of the O & M Plan as set forth in the IRAP and for oversight, monitoring and other costs necessary to

assure the effectiveness and integrity of the response activities at the Cemex Interim Response Activity Area for the next thirty (30) year period. Any alternate FAM must be written and executed in accordance with the forms and procedures prescribed by the MDEQ and shall include the type of FAM, the amount of funds to be secured, and a procedure for the continued review and approval of that FAM by the Parties, if appropriate. Submittals provided to the MDEQ pursuant to this Paragraph shall be reviewed and approved or disapproved in accordance with the procedure set forth in Section XIII (Submissions and Approvals) of this Decree. Upon receipt of approval by the Environmental Response Division Chief, Cemex shall implement the FAM within fifteen (15) days.

6.4 Within sixty (60) days after each succeeding five (5) year anniversary date of the end of Cemex's fiscal year, in addition to submitting the information required in Paragraph 6.3, Cemex also shall submit to the MDEQ the following: (1) an updated O&M plan; (2) if necessary, a plan for other additional response activities needed to assure the effectiveness and integrity of the response activities as set forth in the IRAP; and (3) an updated cost estimate for implementing the O&M Plan, and any other necessary response activities, and for oversight, monitoring and other costs for the next thirty (30) year period, including documentation of the actual costs for those activities for the previous five (5) year period. The submittal shall include a certification that the data is true and correct and be signed by an officer representing Cemex. Submittals provided to the MDEQ pursuant to this Paragraph shall be reviewed and approved and/or disapproved in accordance with the procedure set forth in Section XIII (Submissions and Approvals) of this Decree.

6.5 If, at any time, Cemex or the MDEQ identifies the need for additional response activity to assure the effectiveness and integrity of the response activities as provided for in the

IRAP, Cemex shall submit to the MDEQ for review and approval a proposed plan and schedule, and an estimate of the costs for implementing those response activities. Those items shall be submitted within thirty (30) days of identifying the need for the additional response activities. If required by the MDEQ, Cemex also shall submit updated financial test information to determine whether it meets the financial test requirements as set forth in Attachment B in view of the additional costs it will incur to implement those response activities. Upon receipt of the MDEQ's approval, Cemex shall implement additional response activities in accordance with the approved plan and time schedule.

6.6 The MDEQ, based on a reasonable belief that Cemex may no longer meet the requirements for the financial test as specified in Attachment B, may require reports of financial condition at any time from Cemex, in addition to the information specified in Attachment B, and/or require Cemex to submit updated financial test information to determine whether it continues to meet the financial test criteria. If the MDEQ finds that Cemex no longer meets the requirements for the financial test, Cemex shall provide a proposal for an alternate financial assurance mechanism within thirty (30) days after notification of such finding. The Parties shall then proceed as set forth in Paragraph 6.3.

VII. SAMPLING AND ANALYSIS

7.1 All sampling and analysis conducted to implement this Decree shall follow the methodologies prescribed by the rules promulgated pursuant to Parts 201 and 31 of the NREPA, and guidance provided by the MDEQ on sampling locations, collection methods, parameters, detection limits and analytical methods. Any dispute as to the MDEQ guidance on sampling and analysis shall be resolved in accordance with Section XVII (Dispute Resolution).

7.2 Cemex, or its consultants or subcontractors, shall provide the MDEQ ten (10) days notice prior to any sampling activity to be undertaken pursuant to this Decree (other than construction quality assurance testing) to allow the ERD's Project Coordinator, or his or her authorized representative, the opportunity to take split or duplicate samples or to observe the sampling procedures. In circumstances where ten (10) days notice is not possible, Cemex, or its consultants or subcontractors, shall provide notice of the planned sampling activity as soon as possible to the ERD Project Coordinator and explain why earlier notification was not possible. If the ERD Project Coordinator concurs with the explanation provided, Cemex may forego the 10-day notification period for that particular sampling event. If the MDEQ intends to collect split or duplicates of the samples collected by Cemex, the MDEQ will provide its own sample containers, applicable preservatives and personnel for the collection of split or duplicate samples.

7.3 Cemex shall provide the MDEQ with the results of all environmental sampling and other analytical data generated in the performance or monitoring of any requirement under this Decree, Part 201 of the NREPA, or other relevant authorities. Such results shall be included in Progress Reports as set forth in Paragraph 5.10 (Progress Reports). Upon request, the MDEQ will provide Cemex with the results of all environmental sampling or other analytical data generated as a result of any split or duplicate samples collected or received by the MDEQ under Paragraph 7.2.

7.4 Cemex shall assure that the MDEQ and its authorized representatives are allowed access, for the purpose of quality assurance monitoring, to any laboratory that is used by Cemex in implementing this Decree.

VIII. PROJECT COORDINATORS
AND COMMUNICATIONS/NOTICES

8.1 Each party shall designate a Project Coordinator. The MDEQ's Project Coordinator is Robert Wagner. Cemex's Project Coordinator is its Plant Manager. Whenever notices are required to be given or Progress Reports, information on the collection and analysis of samples, sampling data, work plan submittals, approvals, or disapprovals, or other technical submissions are required to be forwarded by one party to the other party under this Decree, or whenever other communications between the Parties are needed, such communications shall be directed to the Project Coordinators at the below listed addresses. If any party changes its designated Project Coordinator, the name, address and telephone number of the successor shall be provided to the other party, in writing, as soon as practicable.

As to the MDEQ:

A. For Record Retention pursuant to Section XII (Record Retention/Access to Information), reimbursement of costs and financial matters pursuant to Section VI (Financial Assurance Mechanism):

Ms. Patricia McKay
Chief, Compliance and Enforcement Section
Environmental Response Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
Telephone: 517-373-7818
FAX: 517-373-2637

(Via courier)
525 West Allegan Street
4th Floor, South Tower
Lansing, MI 48933

B. For all payments (including stipulated penalties) pertaining to this Decree:

Revenue Control Unit
Michigan Department of Environmental Quality
525 West Allegan Street
5th Floor, South Tower
P.O. Box 30657
Lansing, MI 48909

To ensure proper credit, all payments made pursuant to this Decree, excluding Paragraphs 18.1(b) and 18.6, must reference Cemex, Inc., the Court Case No., and the ERD Account Number ERD 2116. To ensure proper credit, all payments made pursuant to Paragraphs 18.1(b) and 18.6 of this Decree must reference Cemex, Inc., the Court Case No. and SWQD Account # 4801.

C. For all copies pursuant to Paragraphs 18.1(b) and 18.6:

Mr. Thomas Rohrer
Chief, Enforcement Unit
Surface Water Quality Division
P.O. Box 30273
Lansing, Michigan 48909

D. For any Submission or documentation that is required to be sent to the Attorney

General pursuant to this Decree:

Assistant Attorney General in Charge
Department of Attorney General
Natural Resources and Environmental Quality Division
525 West Allegan Street
5th Floor, South Tower
Lansing, MI 48933

E. For all other matters pertaining to this Decree:

Robert Wagner, Project Coordinator
Environmental Response Division
Cadillac District, Gaylord Field Office
Michigan Department of Environmental Quality
2100 West M-32
Gaylord, Michigan 49735
Phone: (517) 705-3452
Fax: (517) 731-6181

As to Cemex:

Plant Manager
Cemex, Inc.
16000 Bells Bay Road
Charlevoix, Michigan 49720
Phone: (231) 547-9971
Fax: (231) 547-6202

With a copy to:

Cemex, Inc.
1200 Smith Street, Suite 2400
Houston, Texas 77002

8.2 Cemex's Project Coordinator shall have primary responsibility for overseeing the implementation of the response activities and other requirements specified in this Decree.

8.3 The MDEQ may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Decree.

IX. ACCESS

9.1 Upon the Effective Date of this Decree and to the extent access to the Facility is owned, controlled by, or available to Cemex, the MDEQ, its authorized employees and representatives, contractors and consultants, upon presentation of proper credentials and

providing reasonable notice to Cemex, shall have access at all reasonable times to the Facility and any property to which access is required for the implementation of this Decree, for the purpose of conducting any activity authorized by this Decree or to otherwise fulfill any responsibility under federal or State law with respect to environmental conditions at the Facility, including, but not limited to:

- (a) Monitoring response activities or any other activities taking place pursuant to this Decree at the Facility;
- (b) Verifying any data or information submitted to the MDEQ;
- (c) Conducting investigations relating to contamination at the Facility;
- (d) Obtaining samples;
- (e) Assessing the need for or planning or implementing response activities at the Facility;
- (f) Assessing compliance with requirements for the implementation of monitoring, operation and maintenance, and other measures necessary to assure the effectiveness and integrity of the MDEQ-approved IRAP;
- (g) Inspecting and copying non-privileged records, operating logs, contracts, or other documents; or
- (h) Communicating with Cemex's Project Coordinator or other personnel, representatives, or consultants for the purpose of assessing compliance with this Decree.

9.2 To the extent that the Facility, or any other area where response activities are to be performed by Cemex under this Decree, is owned or controlled by persons other than Cemex, Cemex shall use its best efforts to secure from such persons access for the Parties and their authorized employees, agents, representatives, contractors and consultants. Each access

agreement shall be embodied in a written document and Cemex shall provide the MDEQ with a copy of each access agreement secured pursuant to this Section. For purposes of this Paragraph, “best efforts” includes, but is not limited to, reasonable compensation to the owner or taking judicial action pursuant to Section 20135a of the NREPA or other applicable law to secure such access. If, after using their best efforts, Cemex is unable to obtain access within forty-five (45) days after either Party determines that access is necessary, Cemex shall promptly notify the MDEQ.

9.3 Any lease, purchase, contract or other agreement entered into by Cemex, which transfers to another person a right of control over the Facility or a portion of the Facility, shall contain a provision preserving for the MDEQ or other persons undertaking the response activities and their authorized representatives, the access provided under Sections IX (Access) and XII (Record Retention/Access to Information).

9.4 Any person granted access to the Facility pursuant to this Decree shall comply with all applicable health and safety laws and regulations, including the Mine Safety and Health Act.

X. CREATION OF DANGER

If Cemex, during the performance of response activities conducted pursuant to this Decree, becomes aware of information concerning the occurrence of any event that causes a release or threat of a release of a hazardous substance from the Facility or that poses or threatens to pose an imminent and substantial endangerment to on-site personnel or to the public health, safety, or welfare, or the environment, Cemex shall immediately undertake all appropriate actions to prevent, abate, or minimize such release, threat or endangerment and shall immediately notify the MDEQ’s Project Coordinator or, in the event of his or her unavailability,

shall notify the Pollution Emergency Alerting System (PEAS, 1-800-292-4706). In such an event, any actions taken by Cemex shall be in accordance with all applicable health and safety laws and regulations. Within ten (10) days of notifying the MDEQ of such an event, Cemex shall submit a written report setting forth the events that occurred and the measures taken and/or to be taken to mitigate any release, threat, or endangerment caused or threatened by the event and to prevent recurrence of such an event. Regardless of whether Cemex notifies the MDEQ under this Section, if response activities undertaken under this Decree cause a release or threat of release or pose or threaten to pose an imminent and substantial endangerment to on-site personnel or to public health, safety, or welfare or the environment, the MDEQ may: (a) require Cemex to stop response activities at the Facility for such period of time as may be needed to prevent or abate any such release, threat or endangerment; (b) require Cemex to undertake any actions that the MDEQ determines are necessary to prevent or abate any such release, threat or endangerment; or (c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat or endangerment. In the event that the MDEQ undertakes any action to abate such a release, threat, or endangerment, Cemex shall reimburse the Plaintiffs for all response activity costs lawfully incurred by the State. Payment of such costs shall be made in the manner provided in Section XVIII (Reimbursement of Costs and Payment of Civil Penalties).

XI. COMPLIANCE WITH OTHER LAWS

All actions required to be taken pursuant to this Decree shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws and regulations, including Part 201 of the NREPA, the Part 201 Rules, and laws relating to occupational safety and health. Other agencies may also be called upon to review the implementation of response activities under this Decree.

XII. RECORD RETENTION/ACCESS TO INFORMATION

12.1 Cemex shall preserve and retain, during the pendency of this Decree and for a period of five (5) years after issuance of the Approval of Performance of Response Activities, pursuant to paragraph 5.7(b), all records, sampling or test results, charts, and other documents relating to the release or threat of release of hazardous substances and the storage, generation, disposal, treatment, or handling of hazardous substances at the Cemex Property, and any records that are maintained or generated pursuant to any requirement of this Decree. After the five (5) year period of document retention, Cemex may seek the MDEQ's written permission to destroy the documents, excluding any documents relating to O&M, oversight, monitoring and other measures necessary to secure the effectiveness and integrity of the containment measures set forth in the MDEQ-approved IRAP, or Cemex may offer to relinquish custody of said documents to the MDEQ. In any event, Cemex shall obtain the MDEQ's written permission prior to the destruction of any documents. Cemex's request shall be accompanied by a copy of this Decree and sent to the address listed in Section VIII (Project Coordinators and Communications/Notices) or to such other address as may subsequently be designated in writing by the MDEQ. Notwithstanding this provision, Cemex shall maintain and retain any due care documentation as required by and in accordance with Part 201 and the Part 201 Rules. Nothing in this Section shall be construed as relieving Cemex of any obligation to maintain records under any other State or Federal law.

12.2 Upon request, Cemex shall provide to the MDEQ all non-privileged or nonconfidential documents and information within its possession, or within the possession or control of its employees, relating to response activities at the Facility or to the implementation of the requirements of this Decree, including, but not limited to, records regarding the collection

and analysis of samples, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing forms, correspondence, or other documents or information related to the response activities. Cemex shall also, upon request, make available to the MDEQ, upon reasonable notice, Cemex's employees with knowledge of relevant facts concerning the performance of response activities. Cemex shall also, upon request, provide the MDEQ with the names and addresses of all contractors, agents or representatives that may have information or knowledge of relevant facts concerning the performance of response activities.

12.3 Cemex may designate, in accordance with Section 20117(10) and (11) of Part 201 of the NREPA, MCL 324.20117(10) and (11), information that Cemex believes it is entitled to protect or keep confidential. If no such claim accompanies the information when it is submitted to the MDEQ, the information may be made available to the public by the MDEQ without further notice to Cemex. Cemex shall not assert a confidentiality or privilege claim for information described in subsections 20117(11)(a)-(h) of Part 201 of the NREPA, MCL 324.20117(a)-(h). Information or data generated under this Decree shall not be subject to Part 148 of the NREPA, MCL 324.14801 *et seq.*

XIII. SUBMISSIONS AND APPROVALS

13.1 All plans, reports, schedules, and submittals (collectively "Submissions") required by this Decree shall comply with all applicable laws and the requirements of this Decree and be delivered to the MDEQ in accordance with the schedules set forth in this Decree. Any Submission delivered to the MDEQ pursuant to this Decree shall include a reference to the Cemex Facility and the Circuit Court Case Number. Any Submission delivered to the MDEQ

for approval also shall be considered by the MDEQ to be a “Draft” and will remain so until written final approval from the MDEQ has been issued.

13.2 After receipt of any Submission pursuant to Paragraph 5.1 of this Decree, the ERD Division Chief will, in writing, (a) approve the Submission; (b) approve the Submission with modifications, or (c) disapprove the Submission and notify Cemex of the deficiencies in the Submission. For any other Submission relating to response activities, which is required to be submitted for approval pursuant to this Decree, the ERD District Supervisor will in writing: (a) approve the Submission; (b) approve the Submission with modifications; or (c) disapprove the Submission and notify Cemex of the deficiencies in the Submission. Upon receipt of a notice of approval or approval with modifications from the MDEQ, Cemex shall proceed to take any action required by the Submission, as approved or as modified, and shall submit a new cover page and any modified pages of the plan marked “Final”. Any approval with modification may be disputed by Cemex pursuant to Section XVII (Dispute Resolution).

13.3 Upon receipt of a notice of disapproval from the MDEQ pursuant to Paragraph 13.2, Cemex shall correct the deficiencies and resubmit the Submission for MDEQ review and approval within thirty (30) days, unless the notice of disapproval specifies a longer time period for resubmission. Unless otherwise stated in the MDEQ’s notice of disapproval, Cemex shall proceed to take any response activity not directly related to the deficient portion of the Submission. Pursuant to Section XIX (Stipulated Penalties), any stipulated penalties applicable to the delivery of the Submission shall accrue during the thirty (30)-day period or other time period specified by the MDEQ for Cemex to re-submit the Submission, but shall not be payable unless the resubmission is also disapproved. Upon receipt, the MDEQ will review the resubmitted Submission in accordance with the procedure stated in Paragraph 13.2. If the

Submission is again disapproved, the MDEQ will so advise Cemex and, as set forth above, stipulated penalties shall accrue upon the date of the MDEQ's original disapproval of the Submission and continue to accrue until Cemex delivers an approvable Submission. The MDEQ's disapproval of a Submission or a resubmitted Submission is subject to dispute resolution in accordance with Section XVII (Dispute Resolution).

13.4 Upon approval by the MDEQ, any Submission and attachments to Submissions required by this Decree are incorporated into this Decree and are enforceable pursuant to the terms of this Decree. If there is any conflict between this Decree and any Submission approved by the MDEQ, the Decree shall prevail.

13.5 A finding of approval or approval with modifications shall not be construed to mean that the MDEQ concurs with all conclusions, methods, or statements in any Submission or warrants that the Submission comports with law.

13.6 No informal advice, guidance, suggestions or comments by the MDEQ regarding any Submission or any other writing submitted by Cemex shall be construed as relieving Cemex of its obligation to obtain such formal approval as may be required by this Decree.

XIV. INDEMNIFICATION AND INSURANCE

14.1 Cemex shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any and all claims or causes of action arising from or on account of acts or omissions of Cemex, their officers, employees, agents or any persons acting on their behalf or under their control in carrying out response activities pursuant to this Decree.

14.2 Cemex shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any and

all claims or causes of action for damages or reimbursement from the State arising from, or on account of, any contract, agreement or arrangement between Cemex and any person for performance of response activities at the Facility, including claims on account of construction delays.

14.3 The State shall give Cemex notice of any claim for which the State plans to seek indemnification pursuant to Paragraphs 14.1 and 14.2, shall consult with Cemex prior to settling such claim, and shall provide Cemex the opportunity to defend such claims with attorneys of Cemex's choosing if Cemex objects to the terms of settlement.

14.4 Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors, or representatives shall be held out as a party to any contract entered into by or on behalf of Cemex in carrying out actions pursuant to this Decree. Neither Cemex nor any contractor shall be considered to be an agent of the State due to the entry of this Consent Decree, the MDEQ's approval of the IRAP or any Submissions, or the MDEQ's oversight activities at this Facility. This Decree shall not be construed to be an indemnity by the State for the benefit of Cemex or any other person.

14.5 Cemex waives any and all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for damages, reimbursement, or set-off of any payments made or to be made to Plaintiffs, that arise from, or on account of, any contract, agreement, or arrangement between Cemex and any person for the performance of response activities at the Facility, including claims on account of construction delays.

14.6 Prior to commencing response activities pursuant to this Decree, Cemex shall secure, and shall maintain for the duration of this Decree, comprehensive general liability

insurance with limits of One Million Dollars (\$1,000,000.00), combined single limit, naming the MDEQ, the Attorney General and the State of Michigan as additional insured parties. If Cemex demonstrates by evidence satisfactory to the MDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, then with respect to that contractor or subcontractor, Cemex needs to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the method used to insure, and prior to commencement of response activities pursuant to this Decree, Cemex shall provide the MDEQ and the Attorney General with certificates evidencing said insurance and the MDEQ's, the Attorney General's and the State of Michigan's status as additional insured parties. In addition, for the duration of this Decree, Cemex shall satisfy, or shall assure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of Workers' Disability Compensation Insurance for all persons performing response activities on behalf of Cemex in furtherance of this Decree.

XV. MODIFICATIONS

If this Decree, other than work plans for the MDEQ-approved IRAP or time schedules contained in the MDEQ-approved IRAP or this Decree, is modified, such modification shall be in writing by signature of the Chief of the ERD of the MDEQ, the Attorney General, Cemex's Project Coordinator or other authorized representative and shall be approved and entered by the Court. Any time schedules, workplans, Submissions or attachment to Submissions required by this Decree, excluding the MDEQ-approved IRAP (including the FAM), may be modified by written agreement between Cemex's designated Project Coordinator or other authorized representative and the MDEQ's Project Coordinator. The MDEQ-approved IRAP, (including

the FAM) may only be modified by written agreement between Cemex's Project Coordinator and the MDEQ, ERD Division Chief.

XVI. FORCE MAJEURE

16.1 Cemex shall perform the requirements of this Decree within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure". Cemex shall not be deemed to be in violation of this Decree if the State agrees that a delay in performance is attributable to a Force Majeure event pursuant to Paragraph 16.4 or if a delay in performance is determined to be appropriate at the conclusion of a dispute resolution proceeding between the Parties.

16.2 For the purposes of this Decree, "Force Majeure event" is defined as any event arising from causes beyond the control of and without the fault of Cemex, of any entity controlled by Cemex, or of Cemex's contractors, that delays or prevents the performance of any obligation under this Decree despite Cemex's best efforts to fulfill the obligation. The requirement that Cemex exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event as it is occurring and following the potential Force Majeure event, such that any delay is minimized to the greatest extent possible. A Force Majeure event does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of Cemex's acts or omissions.

16.3 If any event occurs or has occurred that may delay the performance of any obligation under this Decree, whether or not caused by a Force Majeure event, Cemex shall notify the MDEQ by telephone or telefax within two (2) business days of discovering the event, if that event causes or may cause a delay in Cemex's compliance with any provision of this

Decree. Verbal notice or telefax notice shall be followed by written notice within ten (10) calendar days and shall describe in detail the anticipated length of the delay; the precise causes of the delay or potential delay; the specific obligations of this Decree that will or may be affected by the delay; the measures taken or to be taken by Cemex to avoid, minimize or mitigate the delay or the effect of the delay and the timetable for performance of those measures; Cemex's rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Cemex, such event may cause or contribute to an endangerment to public health, safety, or welfare or the environment. Cemex shall include with any notice all available documentation supporting its claim that a delay or potential delay is attributable to a Force Majeure event.

16.4 If the State agrees that a delay or potential delay is attributable to a Force Majeure event, the State will provide written notification of its decision to Cemex. The State's written notification will include the length of the extension, if any, for the performance of specific obligations under this Decree that are affected by the Force Majeure event and for which Cemex has sought an extension. An extension of the schedule for performance of an obligation affected by the Force Majeure event shall not, of itself, extend the schedule for performance of any other obligation unless Cemex requests and demonstrates the need for an extension for each specific obligation.

16.5 If the State does not agree that a delay or anticipated delay has been or will be caused by a Force Majeure event, the State will notify Cemex of its decision. If Cemex disagrees with the State's decision, the dispute shall be resolved in accordance with Section XVII (Dispute Resolution) of this Decree. In any such proceeding, Cemex shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been

or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Cemex has complied with all the requirements of this Section XVI.

16.6 The Parties shall stipulate to any modifications to a work plan that are agreed to between the Parties pursuant to Paragraph 16.4 or that are made as the result of dispute resolution pursuant to Paragraph 16.5 and this Decree shall be modified accordingly as set forth in Section XV (Modifications).

16.7 Failure of Cemex to comply with the notice requirements of Paragraph 16.3 shall render this Section XVI void and of no force and effect as to the particular event involved. The State may, in its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 16.3 of this Decree. The State will provide written notice to Cemex of any such waiver.

XVII. DISPUTE RESOLUTION

17.1 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Decree and shall apply to all provisions of this Decree, excluding paragraph 5.11(a) and Section X (Creation of Danger). However, Cemex may invoke dispute resolution if MDEQ seeks reimbursement of Oversight Costs incurred pursuant to Section X (Creation of Danger). The procedures set forth in this Section shall not apply to actions by the State to enforce obligations of Cemex that have not been disputed in accordance with this Section. Any dispute that arises under this Decree shall in the first instance be the subject of informal negotiations between the Parties. The period of negotiations shall not exceed

twenty (20) days from the date of written notice by any party that a dispute has arisen, but it may be extended by an agreement of the Parties. The period for informal negotiations shall end when the MDEQ provides a written statement setting forth its proposed resolution of the dispute to Cemex.

17.2 If the Parties cannot resolve a dispute by informal negotiations under the preceding paragraph, then the position advanced by the MDEQ shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Cemex invokes the formal dispute resolution procedures of this Section by serving on the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position, any supporting documentation relied upon by Cemex, and any actions which Cemex considers necessary to resolve the dispute.

17.3 An administrative record of the dispute shall be maintained by the MDEQ. The administrative record shall include the Statement of Position and all of the information provided by Cemex pursuant to the preceding paragraph, as well as any other documents relied upon by the MDEQ in making its final decision pursuant to the next paragraph. Where appropriate, the MDEQ shall allow submission of supplemental statements of position by the Parties to the dispute.

17.4 If the MDEQ concurs with Cemex's position, the MDEQ shall provide written notice of such concurrence to Cemex. If the MDEQ does not concur with Cemex's position, the MDEQ will notify Cemex in writing, setting forth the basis of its decision. The MDEQ's decision shall control unless, within twenty (20) days after receipt of the MDEQ's proposed resolution, Cemex files a motion for resolution of the dispute with this Court setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the

schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Decree. Within thirty (30) days of Cemex's filing of a motion asking the Court to resolve a dispute, Plaintiffs will file with the Court the administrative record regarding the issues involved in the dispute.

17.5 Any judicial review of the MDEQ's decision shall be limited to the administrative record. If the court finds that the record is incomplete or inadequate, the court may consider supplemental material in the action. In proceedings on any dispute relating to the selection, extent, or adequacy of any aspect of the response activities that are the subject of this Decree, Cemex shall have the burden of demonstrating on the administrative record that the position of the MDEQ is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute, Cemex shall bear the burden of persuasion on factual issues under the applicable standards of review. Nothing herein shall prevent Plaintiffs from arguing that the Court should apply the arbitrary and capricious standard of review to all disputes under this Decree.

17.6 Engagement of dispute resolution under this Section XVII shall stay the obligations(s) of Cemex directly in dispute until the dispute is resolved. Engagement of dispute resolution under this Section XVII shall not extend, postpone or affect in any way any other obligations of Cemex under this Decree, unless the State agrees or this Court so rules. Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Decree, but payment shall be stayed pending resolution of the dispute. In the event, and to the extent, that Cemex does not prevail on the disputed issue, oversight costs, stipulated penalties and/or any applicable interest shall be paid within ten (10) days after resolution of the dispute, in

the manner provided in Paragraph 18.4 of this Decree. Cemex shall not be assessed stipulated penalties for disputes resolved in its favor.

17.7 Notwithstanding this section, Cemex shall pay that portion of a demand for reimbursement of costs or payment of stipulated penalties that is not subject to dispute resolution procedures in accordance with and in the manner provided in Sections XVIII (Reimbursement of Costs and Payment of Civil Penalties) and XIX (Stipulated Penalties), as appropriate.

XVIII. REIMBURSEMENT OF COSTS
AND PAYMENT OF CIVIL PENALTIES.

18.1 Payment of Past Costs

(a) Within thirty (30) days after the Effective Date of this Decree, Cemex shall pay the MDEQ-ERD Fifty Thousand Dollars (\$50,000.00) to resolve all claims for Past Response Activity Costs. Payment shall be paid to the Environmental Response Fund in accordance with Paragraph 18.4.

(b) Within thirty (30) days after the Effective Date of this Decree, Cemex shall pay the MDEQ-SWQD Fifty Thousand Dollars (\$50,000.00) for past costs for investigation and enforcement activities incurred by the SWQD prior to the Effective Date of this Decree relating to the Facility. The Fifty Thousand Dollars shall be paid by certified check made payable to the State of Michigan. The Cemex Facility, the Court Case No., and SWQD Account # 4801 shall be identified on the check. A copy of both the transmittal letter and the check shall be provided simultaneously to: Chief, Enforcement Unit, SWQD and the Assistant Attorney General In Charge, Department of Attorney General, Natural Resources and Environmental Quality Division, 525 West Allegan Street, 5th Floor, South Tower, Lansing, Michigan 48933. Costs

recovered pursuant to this paragraph shall be deposited into the General Fund of the State of Michigan.

18.2 Cemex shall reimburse the State for all Oversight Costs incurred by the State. As soon as possible after each anniversary of the Effective Date of this Decree, the MDEQ will provide Cemex with a written demand for payment of Oversight Costs that have been lawfully incurred by the State. Any such demand will set forth with reasonable specificity the nature of the costs incurred. Except as provided by Section XVII (Dispute Resolution), Cemex shall reimburse the MDEQ for such costs within thirty (30) days of receipt of a written demand from the MDEQ.

18.3 Cemex shall have the right to request a full and complete accounting of all MDEQ demands made hereunder, including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the MDEQ. Provision of these documents to Cemex by the MDEQ may result in the MDEQ incurring additional Oversight Costs that will be included in the annual demand for payment of Oversight Costs.

18.4 All payments made pursuant to this Decree, unless otherwise specified, shall be by certified check made payable to the "State of Michigan - Environmental Response Fund" and shall be sent by first class mail to the address listed in Section VIII (Project Coordinators and Communications/Notices). The Cemex Facility, the Circuit Court Case Number and the ERD Account Number ERD 2116 shall be identified on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Coordinator and the Assistant Attorney General in Charge, Department of Attorney General, Natural Resources and Environmental Quality Division, 525 West Allegan Street, 5th Floor, South Tower, Lansing, Michigan 48933. Costs recovered pursuant to this Section shall be deposited in the

Environmental Response Fund in accordance with the provisions of Section 20108(3) of Part 201 of the NREPA, MCL 324.20108(3).

18.5 If Cemex fails to make full payment for Past Response Activity Costs, SWQD's past costs for investigation and enforcement, Oversight Costs, penalties or stipulated penalties, as specified in Paragraphs 18.1(a) and (b), 18.2, 18.6 and Section XIX (Stipulated Penalties), interest shall begin to accrue on the unpaid balance at the rate specified in Section 20126a(3) of Part 201 of the NREPA, MCL 324.20126a(3), on the day after payment was due until the date upon which Cemex makes full payment of those costs or penalties and the accrued interest to the MDEQ. In any challenge by Cemex to a demand for recovery of costs by the MDEQ, Cemex shall have the burden of establishing that the costs were not lawfully incurred in accordance with Section 20126a(1)(a) of Part 201 of the NREPA, MCL 324.20126a(1)(a).

18.6 Within sixty (60) days of the Effective Date of this Decree, Cemex shall pay One Hundred Thousand Dollars (\$100,000.00) to the General Fund of the State of Michigan to resolve claims for Violations of Part 31, as defined in Paragraph 4.18. Payment shall be made in the manner set forth in Paragraph 18.1(b).

XIX. STIPULATED PENALTIES

19.1 Except as provided by Sections XVII (Dispute Resolution) and XVI (Force Majeure), if Cemex fails or refuses to comply with any term or condition in Sections V (Performance of Response Activities), X (Creation of Danger), and VI (Financial Assurance Mechanism), Cemex shall pay the MDEQ stipulated penalties in the following amounts for each day for every failure or refusal to comply or conform:

<u>Period of Delay</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$1,000
16th through 30th day	\$1,500
Beyond 30 Days	\$3,000

19.2 Except as provided in Sections XVI (Force Majeure), XVII (Dispute Resolution), and excluding any violation of any requirement to make a payment under this Decree, or any violation of Section XI (Compliance With Other Laws) of this Decree, if Cemex fails or refuses to comply with any other term or condition of this Decree, Cemex shall pay the MDEQ stipulated penalties of \$500 a day for each and every failure or refusal to comply. Failure to make timely payments shall subject Cemex to the interest provisions of 18.5 and 19.5.

19.3 Cemex shall notify the MDEQ, in writing, of any violation of this Decree no later than five (5) days after becoming aware of such violation and shall describe the violation. Failure to notify the MDEQ as required by this Paragraph constitutes an independent violation of this Decree.

19.4 Stipulated penalties shall begin to accrue on the day after performance was due, or other failure or refusal to comply occurred, and shall continue to accrue until the final day of correction of the noncompliance. Separate penalties shall accrue for each separate failure or refusal to comply with the terms and conditions of this Decree.

19.5 Except as provided in Section XVII (Dispute Resolution), stipulated penalties owed to the State shall be paid no later than thirty (30) days after receiving a written demand from the State. Payment shall be made in the manner provided in Section XVIII (Reimbursement of Costs and Payment of Civil Penalties). Interest shall accrue on the unpaid balance at the end of the thirty (30)- day period at the rate provided for in Section 20126a(3) of Part 201 of the NREPA, MCL 324.20126a(3).

19.6 Liability for, or payment of, stipulated penalties are not the State's exclusive remedy in the event Cemex violates this Decree. The State reserves the right to pursue any other remedy or remedies to which it is entitled under this Decree or any applicable law for any failure or refusal of Cemex to comply with the requirements of this Decree, including, but not limited to, seeking civil penalties, injunctive relief, specific performance, reimbursement, exemplary damages in the amount of three (3) times the costs incurred by the State of Michigan as a result of Cemex's violation of or failure to comply with this Decree pursuant to Sections 20119(4) and 20137(1) of Part 201 of the NREPA, MCL 324.20119(4) and MCL 324.20137(1), and sanctions for contempt of court, provided that any stipulated penalties that are assessed shall be credited against any civil penalties that may be imposed pursuant to this Paragraph.

XX. COVENANT NOT TO SUE BY THE STATE

20.1 In consideration of the actions that will be performed and the payments that will be made by Cemex under the terms of this Decree, and except as specifically provided in this Section and Section XXI (Reservation of Rights by the State), the State of Michigan hereby covenants not to sue or to take further administrative action against Cemex for:

- (a) Cemex's performance of response activities that it has performed pursuant to the MDEQ-approved IRAP and any work plans approved pursuant to this Decree;
- (b) Reimbursement of Past Response Activity Costs as set forth in Paragraph 18.1(a) of this Decree, under both Part 201 and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 USC 9601 *et seq*, and reimbursement of past costs for investigation and enforcement activities incurred by SWQD as set forth in Paragraph 18.1(b);

(c) Payment of response activity costs incurred by the ERD of the MDEQ and the Michigan Department of Attorney General, acting on behalf of the ERD of the MDEQ as set forth in Paragraph 18.2 of this Decree under both Part 201 and CERCLA; and

(d) Payment of civil penalties for Violations of Part 31, as defined in Paragraph 4.18 and as set forth in Paragraph 18.6 of this Decree.

20.2 The covenants not to sue shall take effect under this Decree as follows:

(a) With respect to Cemex's liability for its performance of response activities pursuant to MDEQ-approved IRAP and any work plans approved pursuant to this Decree, the covenant not to sue shall take effect upon issuance by the MDEQ of the Approval of Performance of Response Activities pursuant to Section V (Performance of Response Activities).

(b) With respect to Cemex's liability for response activity costs incurred by the State for the Facility, the covenant not to sue shall take effect upon the MDEQ's receipt of payments for those costs including any accrued interest.

(c) With respect to civil penalties for Violations of Part 31 of the NREPA, the covenant not to sue shall take effect upon the State's receipt of payment for those penalties and any accrued interest.

20.3 These covenants not to sue extend only to Cemex and do not extend to any other person.

XXI. RESERVATION OF RIGHTS BY THE STATE

21.1 The covenant not to sue applies only to those matters specified in Paragraph 20.1. The MDEQ and the Attorney General reserve the right to bring an action against Cemex under federal and state laws for any matters that are not set forth in Section XX (Covenant Not to Sue by the State). The State reserves, and this Decree is without prejudice to, all rights to take

administrative action or to file a new action pursuant to any applicable authority against Cemex with respect to all other matters, including, but not limited to, the following:

(a) the performance of any other response activities that are required to address the release or threat of release of hazardous substances at the Facility, including, but not limited to, any response activities that may be required if the MDEQ's approval of the IRAP becomes void pursuant to Section V (Performance of Response Activities) of this Decree;

(b) response activity costs other than those referred to in Section XVIII (Reimbursement of Costs and Payment of Civil Penalties);

(c) the past, present or future treatment, handling, disposal, release or threat of release of hazardous substances that occur outside of the Facility and not attributable to the Facility;

(d) the past, present or future treatment, handling, disposal, release or threat of release of hazardous substances taken from the Facility;

(e) damages for injury to, destruction of, or loss of natural resources;

(f) criminal acts;

(g) any matters for which the State is owed indemnification under Section XIV (Indemnification and Insurance) of this Decree; and

(h) the release or threatened release of hazardous substances or violations of federal or state law that occur during or after the performance of response activities required by this Decree.

21.2 The State reserves the right to take action against Cemex if it discovers that any material information provided by Cemex was false or intentionally misleading.

21.3 The MDEQ and the Attorney General expressly reserve all rights and defenses pursuant to any available legal authority that they may have to enforce this Decree against Cemex.

21.4 In addition to, and not as a limitation to any other provision of this Decree, the MDEQ retains all authority and reserves all rights to perform, or contract to have performed, any response activities that the MDEQ determines are necessary and to seek to recover response activity costs authorized by law.

21.5 In addition to, and not as a limitation to any other provision of this Decree, the MDEQ and the Attorney General retain all of their information gathering, inspection, access and enforcement authorities and rights under Parts 31 and 201 of the NREPA and any other applicable statute or regulation.

21.6 Failure by the MDEQ or the Attorney General to timely enforce any term, condition or requirement of this Decree shall not:

(a) Provide or be construed to provide a defense for Cemex's noncompliance with any such term, condition or requirement of this Decree; or

(b) Estop or limit the authority of the MDEQ or the Attorney General to later enforce any such term, condition or requirement of the Decree or to seek any other remedy provided by law.

21.7 This Decree does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed in accordance with this Decree or MDEQ-approved work plans will result in the achievement of the remedial criteria established by law, or that those response activities will assure protection of public health, safety, or welfare, or the environment.

21.8 Except as provided in Paragraph 20.1, nothing in this Decree shall limit the power and authority of the MDEQ or the State of Michigan to take, direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate or minimize a release or threatened release of hazardous substances, pollutants or contaminants on, at or from the Facility.

21.9 Notwithstanding any other provision of this Decree, the State reserves all rights against Cemex for liability it may have under Part 201 of the NREPA for response activities under Part 201 of the NREPA, that are required to address any migration of hazardous substances beyond the Cemex Interim Response Activity Area and for liability under Part 31 of the NREPA for violations that are not included in the definition of Violations of Part 31, as set forth in paragraph 4.18. In the event that the MDEQ determines anytime after three years from the completion of the removal of Pile 4, that the area of former Pile 4 continues to act as a source of contamination, above Part 31 criteria, to the waters of the State or that impacted groundwater, above background groundwater quality, is not being hydraulically captured by the groundwater capture system or the groundwater capture system is not operating as designed, MDEQ reserves the right to require Cemex to implement additional response activities and to pursue penalties under Part 31. These additional response activities may include, but are not limited to, submission and implementation of an MDEQ-approved monitoring plan for the groundwater associated with CKD Pile 5.

21.10 Pursuant to Section 20132(8) of Part 201 of the NREPA, MCL 324.20132(8), the State reserves the right to take future enforcement action under Sections 20119 and 20137 of Part 201 of the NREPA, MCL 324.20119 and MCL 324.20137, if the MDEQ finds it necessary and

appropriate to take an action to assure protection of public health, safety, or welfare, or the environment.

XXII. COVENANT NOT TO SUE BY CEMEX

22.1 Except as provided in Section XVII (Dispute Resolution), Cemex hereby covenants not to sue or take any civil, judicial or administrative action against the State of Michigan, its agencies, or their authorized representatives for any claim or cause of action against Plaintiffs with respect to the Facility arising from this Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of Part 201 of the NREPA, MCL 324.20119(5), or any other provision of law.

22.2 In any subsequent administrative or judicial proceeding initiated by the Attorney General for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, Cemex agrees not to assert, and may not and shall not maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses that are based upon any contention that the claims raised by the MDEQ or the Attorney General in the subsequent proceeding were or should have been brought in this case. Nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XX (Covenant Not to Sue by the State).

XXIII. CONTRIBUTION PROTECTION

Pursuant to Section 20129(5) of Part 201 of the NREPA, MCL 324.20129(5) and Section 113(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9613(f) (CERCLA) and to the extent provided in Section XX (Covenant Not to Sue By

The State), Cemex shall not be liable for claims for contribution for the matters set forth in Paragraph 20.1 of this Decree. Entry of this Decree does not discharge the liability of any other person that may be liable under Section 20126 of Part 201 of the NREPA, MCL 324.20126 and/or the CERCLA, 42 USC §§ 9607 and 9613, to the extent allowable by law. Pursuant to Section 20129(9) of Part 201 of the NREPA, MCL 324.20129(9), any action by Cemex for contribution from any person not a party to this Decree shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to the NREPA or other applicable federal or state law.

XXIV. TERMINATION

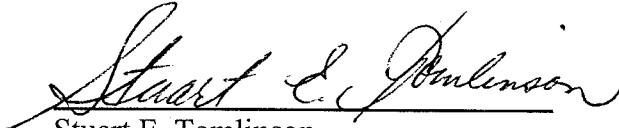
Upon MDEQ's issuance of the Approval of Performance of Response Activities, as set forth in Paragraph 5.7 and after payment of all outstanding oversight costs and penalties, Cemex may request the State to enter into an alternative legally enforceable agreement for the long term requirements associated with performance of the IRAP as defined in Paragraph 5.7(a) and as required by Section 20120b(3) of the NREPA, MCL 324.20120b(3). If an alternative legally enforceable document is entered into between the parties, Cemex's obligations set forth in this Decree shall terminate, with the exception of Paragraph 5.8, Section XII (Record Retention/Access to Information), Section XIV (Indemnification and Insurance) and Section XXII (Covenant Not To Sue By Cemex). Termination of Cemex's obligations set forth in this Decree shall not affect the State's Covenant Not to Sue or Reservation of Rights, nor shall it affect Cemex's Covenant Not to Sue.

XXV. SEPARATE DOCUMENTS

This Decree may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Decree may be executed in duplicate original form.

IT IS SO AGREED BY:

CEMEX, INC.

A handwritten signature in cursive script, reading "Stuart E. Tomlinson", written over a horizontal line.

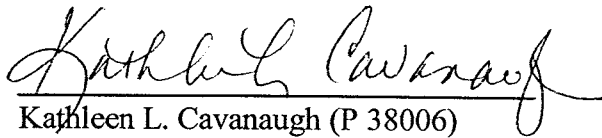
Stuart E. Tomlinson,
Vice President Manufacturing
Cemex, Inc.
1200 Smith Street
Suite 2400
Houston, Texas 77002
Telephone: 713-650-6200

Approved as to form only:

A handwritten signature in cursive script, reading "Grant R. Trigger", written over a horizontal line.

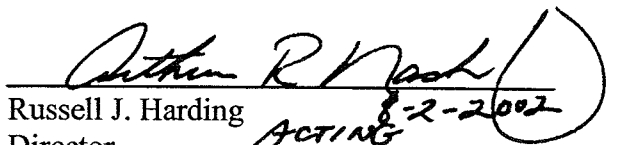
Grant R. Trigger (P38797)
Attorney for Cemex
Honigman, Miller, Schwartz & Cohn
2290 First National Building
Detroit, MI 48226
Telephone: 313-465-7584

JENNIFER M. GRANHOLM
Attorney General for the State of Michigan



Kathleen L. Cavanaugh (P 38006)
Joshua W. Gubkin (P59972)
Assistant Attorneys General
Natural Resources & Environmental Quality Division
525 West Allegan Street,
5th Floor, South Tower,
Lansing, Michigan 48933
Telephone: (517) 373-7540

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY


Russell J. Harding
Director
Michigan Department of Environmental Quality
525 West Allegan Street,
6th Floor, South Tower,
Lansing, Michigan 48933
Telephone: (517) 373-7917

IT IS SO ORDERED, ADJUDGED AND DECREED THIS 6 day of Aug, 2002.

LAWRENCE M. GLAZER

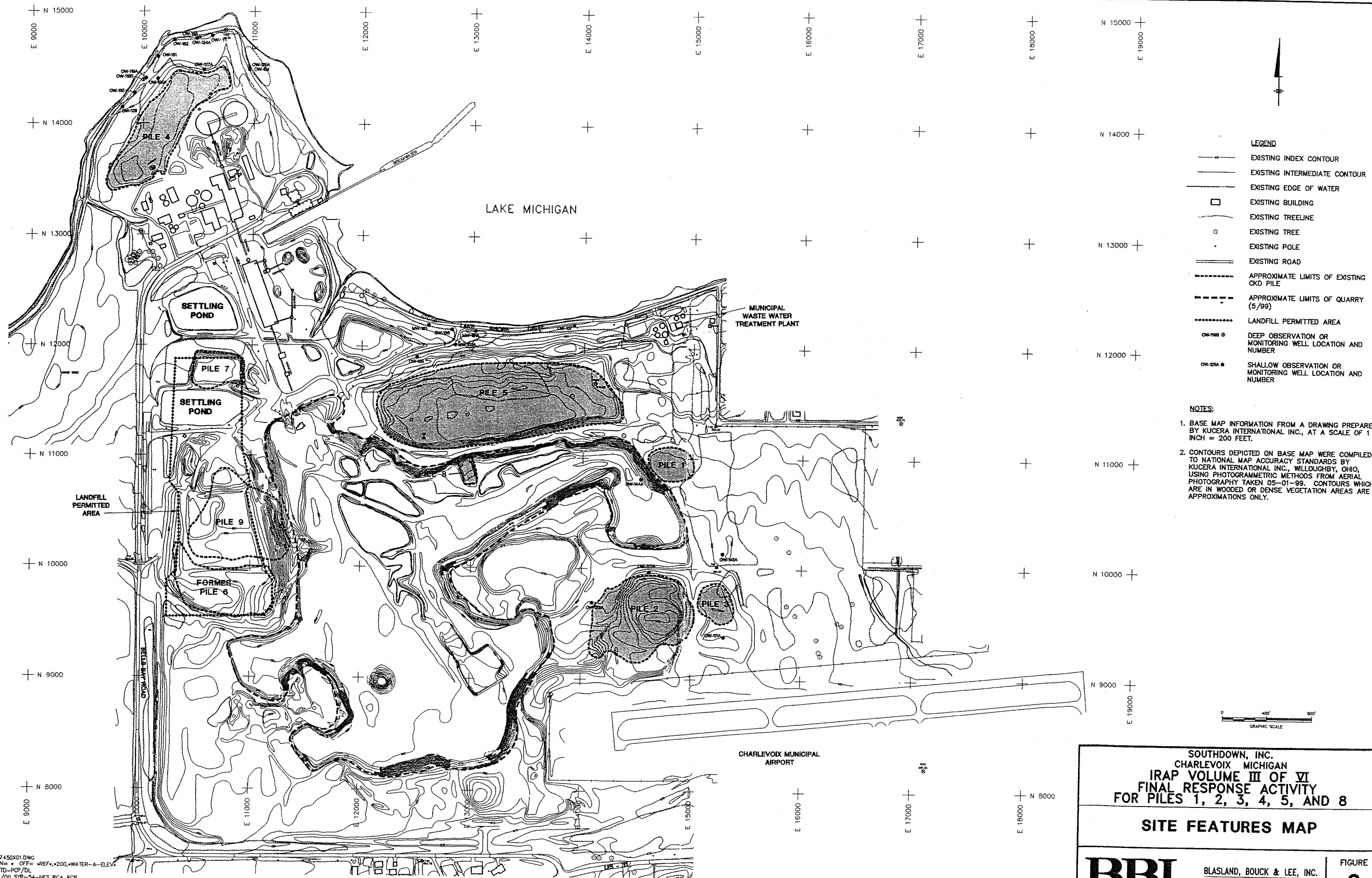
Honorable LAWRENCE M. GLAZER

S: NR/cases/1999250086A-T/CemexCJ final

A TRUE COPY
CLERK OF THE COURT
30th JUDICIAL CIRCUIT COURT

ATTACHMENT A

CEMEX PROPERTY INCLUDING CKD PILES 1, 2, 3, 4, 5, AND 8



ATTACHMENT B

FINANCIAL TEST

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE DIVISION**

FINANCIAL ASSURANCE MECHANISMS

Date: 06/01/2001

Guidance Document

**Financial Assurance Mechanisms: The Financial Test and
Financial Test/Corporate Guarantee**

Appendix A

STANDARD FINANCIAL TEST

The figures for the following items marked with an (*) are to be derived from the company's independently audited, year-end financial statements for the latest fiscal year.

ALTERNATIVE I

1. Sum of the current cost estimates for response activities needed at Michigan facilities, including the cost for operation and maintenance of remedial actions for the next 30-year time period. \$\$\$\$\$\$\$\$
2. Sum of the current cost estimates for response activities needed at non-Michigan facilities, including the cost for operation and maintenance of remedial actions. \$\$\$\$\$\$\$\$
3. Sum of lines 1 and 2. \$\$\$\$\$\$\$\$
- *4. Total liabilities [if any portion of the cost estimates for response activities (lines 1 or 2) is included in total liabilities, you may deduct that amount from this line and add that amount to lines 5 and 6]. \$\$\$\$\$\$\$\$
- *5. Tangible net worth. \$\$\$\$\$\$\$\$
- *6. Net worth. \$\$\$\$\$\$\$\$

STANDARD FINANCIAL TEST

PAGE 2 OF 4

- | | |
|---|------------------|
| *7. Current assets. | \$\$\$\$\$\$\$\$ |
| *8. Current liabilities. | \$\$\$\$\$\$\$\$ |
| 9. Net working capital [line 7 minus line 8]. | \$\$\$\$\$\$\$\$ |
| *10. The sum of net income plus depreciation, depletion and amortization. | \$\$\$\$\$\$\$\$ |
| *11. Total assets in the United States. | \$\$\$\$\$\$\$\$ |
| *12. Total assets in Michigan, excluding the value of all real property on which response activities are necessary. | \$\$\$\$\$\$\$\$ |
| *13. Total assets in Michigan, including the value of all real property on which response activities are necessary. | \$\$\$\$\$\$\$\$ |

YES NO

- | | | |
|---|-----|-----|
| 14. Is line 5 at least \$10 million? | ___ | ___ |
| 15. Is line 5 at least 6 times line 3? | | ___ |
| 16. Is line 9 at least 6 times line 3? | | ___ |
| *17. Are at least 90% of the company's assets located in the United States? | ___ | ___ |
| 18. Is line 11 at least 6 times line 3? | ___ | ___ |
| 19. Is line 4 divided by line 6 less than 2.0? | ___ | ___ |
| 20. Is line 10 divided by line 4 greater than 0.1? | ___ | ___ |
| 21. Is line 7 divided by line 8 greater than 1.5? | ___ | ___ |
| *22. Is line 12 at least \$50 million? | ___ | ___ |
| 23. Is line 13 at least 6 times line 1? | ___ | ___ |

To "pass" Alternative I of the standard financial test, the company must meet two out of three of the ratios listed in lines 19, 20, and 21, and must meet the criteria listed in lines 14, 15, 16, 17, or 18, and 22 and 23.

ALTERNATIVE II

1. Sum of the current cost estimates for response activities needed at Michigan facilities, including the cost for operation and maintenance of remedial actions for the next 30-year time period. \$\$\$\$\$\$\$\$
 2. Sum of the current cost estimates for response activities needed at non-Michigan facilities, including the cost for operation and maintenance of remedial actions. \$\$\$\$\$\$\$\$
 3. Sum of lines 1 and 2. \$\$\$\$\$\$\$\$
 4. Current bond rating of most recent issuance for this company and name of rating service. XXXXXXXX
 5. Date of issuance of bond. XXXXXXXX
 6. Date of maturity of bond. XXXXXXXX
 - *7. Tangible net worth (if any portion of the cost estimates for response activities (lines 1 and 2) is included in "total liabilities" on your financial statements, you may add that portion to this line). \$\$\$\$\$\$\$\$
 - *8. Total assets in the United States. \$\$\$\$\$\$\$\$
 - *9. Total assets in Michigan, excluding the value of all real property on which response activities are necessary. \$\$\$\$\$\$\$\$
 - *10. Total assets in Michigan, including the value of all real property on which response activities are necessary. \$\$\$\$\$\$\$\$
- YES NO
11. Is line 7 at least \$10 million? _____
 12. Is line 7 at least 6 times line 3? _____
 - *13. Are at least 90% of company's assets located in the United States? _____
 14. Is line 8 at least 6 times line 3? _____
 - *15. Is line 9 at least \$50 million? _____
 16. Is line 10 at least 6 times line 1? _____

STANDARD FINANCIAL TEST

PAGE 4 OF 4

To "pass" Alternative II of the standard financial test, the company must have a current rating for the most recent bond issuance of AAA, AA, A, or BBB for Standard and Poor's or Aaa, Aa, A, or Baa for Moody's, and must meet the criteria listed in lines 11, 12, 13, or 14, and 15 and 16.

[Insert the following at the end of the SFT that you choose to use]

I hereby certify that the wording of this form is a true copy of the model financial test provided by the Michigan Department of Environmental Quality (MDEQ), with the exception of any changes made and agreed to by representatives of the MDEQ and [name of company].

Chief Financial Officer

Name of Company

Date: _____

Signed and sealed
in the presence of:

NOTARY PUBLIC

Notary Public _____ County
My Commission Expires _____